

Date Issued: January 28, 1983 (AGO 83-7)

Requested by: Honorable Brynhild Haugland, State Representative

- QUESTION PRESENTED -

Whether any provision of the Constitution of the State of North Dakota prohibits the change of the name of Minot State College or prohibits the use of the word "university" in the name of an institution of higher education located in a particular city as set forth in our Constitution.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that no provision in the Constitution of the State of North Dakota prohibits the changing of the name of Minot State College nor is there any provision that prohibits the use of the word "university" in the name of an institution of higher education located in a particular city as set forth in our Constitution.

- ANALYSIS -

Article IX, Section 13 of the North Dakota Constitution, as amended in 1982, states as follows:

Section 13. The following public institutions are located as provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law:

1. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at the city of Lisbon in the county of Ransom, with a grant of forty thousand acres of land.
2. The school for the blind at the city of Grand Forks in the county of Grand Forks or at such other location as may be determined by the legislative assembly to be in the best interests of the students of such institution and the state of North Dakota.
3. A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.
4. A school of science or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton in the county of Richland, with a grant of forty thousand acres.

5. A state college at the city of Minot in the county of Ward.
6. A state college at the city of Dickinson in the county of Stark.
7. A state hospital for the mentally ill at such place within this state as shall be selected by the legislative assembly.

No other institution of a character similar to any one of those located by article IX, section 12, or this section shall be established or maintained without an amendment of this constitution. (Emphasis supplied).

Prior to 1982, Article IX, Section 13(5), N.D. Constitution, provided for "A state normal school at the city of Minot in the county of Ward."

Article IX, Section 12, N. D. Constitution, which is referenced in the concluding language of Section 13, also identifies the character and locations of public institutions. That section provides:

Section 12. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States in the Act of Congress approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe subject to the limitations provided in the article on school and public lands contained in this constitution.

1. The seat of government at the city of Bismarck in the county of Burleigh.
2. The state university and the school of mines at the city of Grand Forks, in the county of Grand Forks.
3. The North Dakota state university of agriculture and applied science at the city of Fargo, in the county of Cass.
4. A state normal school at the city of Valley City, in the county of Barnes, and the legislative assembly, in apportioning the grant of eighty thousand acres of land for normal schools made in the Act of Congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.
5. The school for the deaf and dumb of North Dakota at the city of Devils Lake, in the county of Ramsey.
6. A state training school at the city of Mandan, in the county of Morton.

7. A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by Congress in the Act aforesaid for state normal schools shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby located at Mayville, and said lands are hereby appropriated for said purpose.
8. A state hospital for the insane at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the Act of Congress aforesaid for other educational and charitable institutions to the benefit and for the endowment of said institution, and there shall be located at or near the city of Grafton, in the county of Walsh, an institution for the feebleminded, on the grounds purchased by the secretary of the interior for a penitentiary building.

No provision of either of these two sections of the Constitution sets forth the specific name of any institution referred to therein. The only provision that is arguably close to establishing the formal name of an institution is Article IX, Section 12(3) which sets forth the location of "the North Dakota state university of agriculture and applied science at the city of Fargo, in the county of Cass." In common practice, that institution is known as North Dakota State University. Likewise, while Article IX, Section 12(2) of our Constitution refers to the location of "the state university and the school of mines at the city of Grand Forks, in the county of Grand Forks," that institution has been referred to as the University of North Dakota and not as the state university of North Dakota.

In fact, section 15-13-01, N.D.C.C., which is the statute paralleling the constitutional provisions establishing the location of the "state normal schools" was amended to allow the "state normal schools" to be referred to as "state colleges" prefixed by the name of the applicable city. The only requirement was that the state normal schools had to first offer curriculums leading to both the bachelor of science and bachelor of arts degrees.

Additionally, the Legislature in 1921 amended Section 1589 of the Compiled Laws of North Dakota for the year 1913 to authorize the Board of Administration (the predecessor of the State Board of Higher Education) to prescribe a course of study for the state normal schools to extend beyond more than two years and to authorize the Board of Administration to grant the bachelor of arts degree in education. See Chapter 109, 1921 N.D. Session Laws. Although the history is unclear, it appears that after that date the Board of Administration took action in the case of the normal schools at Dickinson, Valley City, Mayville, and Minot to institute the bachelor of arts degree in education in each of these normal schools and to begin the process of authorizing these normal schools to be known as state teachers' colleges. In any case, before the end of the 1940's it appears that each of the normal schools was being referred to as a state teacher's college and that no amendment of the Constitution had taken place.

Furthermore, under our present constitutional provisions, a state normal school is the only institution designated for Mayville and Valley City while it wasn't until 1982 that we amended our Constitution to designate the institutions in Minot and Dickinson as state colleges.

It is my opinion that the name of an educational institution, the location of which is set by the Constitution, can be either established by the Legislature or the State Board of Higher Education. Past practice clearly demonstrates that both the Legislature and the State Board of Higher Education have, from time to time, established the name of the higher education institutions in this state.

The words "state university," "normal school," "state college," and "agricultural college" are not defined in the Constitution or the Century Code. They have been treated by our Legislature not as words of limitation but only as generic institutions of higher education the curriculum and degrees of which have been determined by the Legislature and the State Board of Higher Education. The only arguable exception to this practice was the fact that in 1960 the voters amended the Constitution to delete the reference to the words "agricultural college" in Article IX, Section 12(3) of our Constitution and replaced them with the words "North Dakota state university of agriculture and applied science." But even with that change, the general legislative history in North Dakota has been that the character of the institution has been determined by the Legislature through the appropriations it has made and through specific guidance it has given from time to time as well as through the State Board of Higher Education in the curriculum that it has established and the degrees that it has granted in each of the state's institutions of higher education.

Accordingly, it is my opinion that the Legislature and the State Board of Higher Education have, through longstanding practice and action, established that the name of an institution of higher education, its character in terms of the curriculum offered and the degrees granted, is set not by the Constitution but by the Legislature and the State Board of Higher Education. Accordingly, it is my opinion that the Legislature can change the name of Minot State College and that it can use the word "university" or whatever name it chooses to use for that institution located in the city of Minot as required by Article IX, Section 13(5) of our Constitution.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General